was overpowered. The extension of the Fourteenth Amendment to cover the facts here presented, is open to the same objection as in the case of the Thirteenth Amendment. Like the Thirteenth, the Fourteenth is not restricted to discriminations against the negro race. It protects all persons without regard to race, and has even been held to extend to corporations. *Pembina Mining Co.* v. *Pennsylvania* (1888) 125 U. S. 181; *County of Santa Clara* v. *Southern Pacific R. Co.* (1883) 18 Fed. 385; In re *Tiburcio Parrott* (1880) 1 Fed. 481. Any interference by one with the life, liberty, or property of another because of the commission by that other of a criminal offence would, equally with the acts done in the principal case, be a matter of federal cognizance. It is difficult to believe that any such radical extension of federal jurisdiction can or will be upheld.

CRIMINAL TRIAL BY A DE FACTO JURY.—As the organization of the the common law jury was simple, the main grounds for objecting to the array were partiality and interest. Duncombe, Trial per Pais (7th ed.) p. 141. These being serious objections, the courts were inclined to regard all objections as equally serious. Wharton, Crim. Pl. & Pr. (8th ed.) § 886; *O'Connell* v. *The Queen* (1844) 11 Cl. & F. 155. But the summoning and impanelling of the present day jury is a complex matter and the courts refuse to entertain objections based on irregularities in its organization unless they tend to prejudice the rights of the parties. *State* v. *Neagle* (1876) 65 Me. 468. The statutory provisions as to its organization are directory, *State* v. *Matthews* (1885) 88 Mo. 121, being intended to provide an efficient machinery for organization. *Friery* v. *The People* (N. Y. 1866) 2 Keyes 452. So long as the defendant secures the impartial jury guaranteed him, he may not avail himself of even the most culpable irregularities. *Ferris* v. *The People* (N. Y. 1866) 31 How. Pr. 140. This rule of expediency, although generally accepted, is open to objection as tending to minimize the rights of the defendant. *Commonwealth* v. *Hoofneagle* (Pa. 1810) 1 Brown 201, note. *Burley* v. *The State* (1869) 1 Neb. 385. This criticism is of particular interest in connection with the recent holding of the Court of Appeals that a capital conviction could not be set aside on the ground that the statute providing for the organization of the jury contravened Art. III § 18 of the state constitution. *People* v. *Ebelt* (N. Y. 1905) 73 N. E. 235.

The decision rests upon the authority of *People* v. *Petrea* (1883) 92 N. Y. 128, and justification is sought upon two grounds. First, that the jury being a de facto body, its legality was not open to collateral attack; and second, that the defendant, having been convicted by an impartial body of men carefully chosen, has not been prejudiced. But the first point is untenable since, jurymen not being officers, *State* v. *Bradley* (1881) 48 Conn. 535, the law as to de facto officers has no application to them. *Bruner* v. *The Court* (1891) 92 Cal 239. The second argument confuses the moral and legal issues. The defendant is presumably innocent until found guilty by due process of law. The state constitution (Art. 1 § 2) declares due process to be trial by jury. Can it be said that a body of men, not

provided for by law and organized by an officer acting without authority, is a jury? One man cannot summon twelve others and, at his pleasure, constitute them a body authorized to pass judgment upon their fellows. In an exhaustive opinion in *State* v. *Doherty* (1872) 60 Me. 504, it was held that an omission by the legislature to provide for the organization of a grand jury could not be supplied or cured by the county court and that its independent efforts to impanel one were absolutely void. See *State* v. *McNamara* (1867) 3 Nev 60; *Bruner* v. *The Court*, supra. It has repeatedly been held that a pseudo jury of more or less than the prescribed number of members is no jury since such a body has not the sanction of law. *Cancemi* v. *The People* (1858) 18 N. Y. 128; *Work* v. *The State* (1853) 2 O. St. 296; *The People* v. *Thurston* (1855) 5 Cal. 69. It would seem that this precise principle is involved in the case under consideration.

POWER OF A COURT TO ACT UPON ITS OWN MOTION.—The extent to which the functions of the court are to be limited to those of an umpire between the parties is suggested by a recent Missouri decision holding that, irrespective of statute, the court, on its own motion, may set aside a verdict and order a new trial on the grounds of erroneous instruction, although no exceptions had been taken thereto. *Nulton* v. *Croskey* (1905) 85 S. W. 644.

The conception of the strict neutrality of the court seems to have been an early characteristic of the common law. The underlying idea was that the parties must learn the rules of the game at their peril and that it was their own concern if they threw away their chances. 2 Poll. & Mait. Hist. Eng. Law, 670; Pollock, 3 COL. LAW REV. 510. Such a rule carried to its logical conclusion would tend to make of the court a mere figure-head and would lead to a miscarriage of justice unless somewhat modified. Accordingly it was early decided in England that wherever one had been convicted and the time in which he might make motion had elapsed, the court might grant a new trial of its own motion where it appeared that injustice would otherwise be done. *King* v. *Gough* (1781) Douglas 791; *Rex* v. *Atkinson* (1784) 5 D. & E. 437, note. Likewise in civil cases the court might grant a new trial where the party aggrieved was disqualified to make the motion. *Birt* v. *Barlow* (1779) Douglas 170.

The decided tendency of modern English decisions is away from the umpire theory and towards the position that the judge's function is to find out the truth. To this end he may call and examine witnesses not called by either party and, without his leave, neither party has a right to cross-examine them. *Coulson* v. *Disborough* [1894] 2 Q. B 316. But the same is not true of American development. The principle followed here has been to restrict the exercise of the court's discretion lest private rights be impaired. It has been held that a judge may not set aside a verdict on his own motion unless rendered under circumstances making it legally void, such as misconduct of the jury, *Lloyd* v. *Brinck* (1871) 35 Tex. 1; nor rule out evidence which has gone to the jury without objection. *Barker* v. *Blount* (1879) 63 Ga. 423 *semble*. Even under the limitations imposed